

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROGER FOUNTAIN

Plaintiff,

v.

US STANDARD PRODUCTS CORP.

Defendant.

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Case No. 4:21-cv-3043

DEFENDANT US STANDARD PRODUCTS CORP'S EXHIBIT INDEX

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Case Number: 215200242158

Roger Fountain
Plaintiff
vs.
US Standard Products Corp
Defendant

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In the Justice Court
Harris County, Texas
Precinct 5, Place 2
16715 Clay Road
Suite 3
Houston, TX 77084
713-274-0800
www.jp.hctx.net

Citation (Small Claims Case)

THE STATE OF TEXAS
COUNTY OF HARRIS

TO: ANY SHERIFF, CONSTABLE, PROCESS SERVER CERTIFIED UNDER ORDER OF THE SUPREME COURT,
OTHER PERSON AUTHORIZED BY COURT ORDER, OR CLERK:

Deliver this citation, together with a copy of the petition, to: Lauren Pierce

US Standard Products Corp
6510 NW 21st Avenue
Ft Lauderdale, FL 33309

TO THE DEFENDANT:

You have been sued. You are commanded to appear by filing a written answer to the petition filed by Plaintiff with the Clerk of the Court on or before the end of the 14th day after the date of service of this citation. If you fail to file an answer as required, a judgment by default may be rendered for the relief demanded in the petition.

Date Petition Filed: 08/24/2021

Nature of demand made by Plaintiff(s): money owed in the amount of \$20,000.00. A copy of the petition is attached.

Notice

You have been sued. You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ an attorney. You or your attorney must file an answer with the court. Your answer is due by the end of the 14th day after the day you were served with these papers. If the 14th day is a Saturday, Sunday, or legal holiday, your answer is due by the end of the first day following the 14th day that is not a Saturday, Sunday, or legal holiday. Do not ignore these papers. If you do not file an answer by the due date, a default judgment may be taken against you. For further information, consult the Texas Rules of Civil Procedure, Part V, Rules of Practice in Justice Courts. A copy of the Rules is available at <http://www.jp.hctx.net> or at the Justice Court.

Date: 8/24/2021



/s/ Ana Gallo
Clerk of the Court
Harris County Justice Court
Precinct 5, Place 2

Address of Plaintiff

8524 HWY 6 N Suite 419
Houston TX 77095

Address of Plaintiff's Attorney

Small Claims Petition

NO. 215300242158ROGER FOUNTAIN

§ In the Justice Court of Harris County, Texas

Plaintiff(s)

§ Precinct _____ Place _____

vs.
U.S. STANDARD PRODUCTS
CORP§
§
§
§ RECEIVED
§
§Defendant(s)
Plaintiff: ROGER FOUNTAINAUG 24 2021Describe the legal nature of the plaintiff (e.g., individual, sole proprietorship, partnership, corporation)
INDIVIDUAL Hon. Jeff WilliamsDefendant: US STANDARD PRODUCTS CORP JUSTICE OF THE PEACE 5/2Address: 41 HONECK STCity: ENGLEWOOD State: NJ Zip: 07631 Date of Birth (if applicable): n/aDescribe the legal nature of the defendant (e.g., individual, sole proprietorship, partnership, corporation)
CORPORATION*Defendant may be served by serving LAUREN PIERCE
(state the name of the defendant if defendant is an individual, or state the name and title of the person who is authorized to receive service of process for the defendant if defendant is a partnership, limited partnership, corporation, or limited liability company), who may be served at6510 NW 21ST AVE, FT. LAUDERDALE, FL 33309
(state the address for service of process).The defendant's usual place of business or residence, or other place where defendant can probably be found is 41 HONECK ST
ENGLEWOOD, NJ 07631.

Cause of Action

(State the cause of action in plain and concise language, sufficient to give fair notice of the claim and to provide enough information to enable the defendant to prepare a defense. You may include information showing venue is proper in the Justice of the Peace Precinct in which you are filing. If you are seeking personal property, you must describe the property and state the value of the property.)

VIOLATIONS OF TCPA FOR PHONE CALLS
AND TEXT MESSAGES

Relief Requested (Describe the relief you are requesting, itemizing the amount of damages you are seeking.)

\$20,000.00 FOR DAMAGES ALLOWED BY FEDERAL LAW

Respectfully submitted,

Signature of Plaintiff or Plaintiff's Attorney of Record

Printed Name: ROGER FOUNTAIN

State Bar No.

Address: 8524 Hwy 6 N #419 Houston, TX 77095Telephone: 972-890-4059 Fax Number:E-Mail Address: rcfountain@live.com Plaintiff consents to the e-mail service of the answer and any other motions or pleadings to this e-mail address.

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CAUSE NO. 215200242158

ROGER FOUNTAIN,

Plaintiff,

v.

US STANDARD PRODUCTS CORP.,

Defendant.

**IN THE JUSTICE OF THE
PEACE COURT**

PRECINCT 5, PLACE 2

HARRIS COUNTY, TEXAS

**DEFENDANT US STANDARD PRODUCTS CORP.'S
ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES**

Defendant Standard Products Corp. (“Defendant”), files this Original Answer and Affirmative Defenses to the claims asserted by Plaintiff Roger Fountain in his Small Claims Petition, and would show as follows:

**I.
GENERAL DENIAL**

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant hereby asserts a general denial to all of the material allegations contained in Plaintiff's Small Claims Petition and demands strict proof thereof.

**II.
AFFIRMATIVE DEFENSES**

Defendant raises the following affirmative defenses, but reserves the right to amend its Answer to raise any additional affirmative defenses which it may have against Plaintiff's claims:

2. Plaintiff lacks standing to bring the claims that he is purportedly asserting.
3. The Complaint fails to state a claim upon which relief may be granted.
4. Plaintiff has not suffered a concrete and particularized injury.

5. To the extent that Plaintiff received the subject text message(s) and/or telephone call(s) alleged in the Complaint, prior express consent, as well as prior express written consent, was obtained for the purpose of contacting the phone number at which Plaintiff alleges to have received the subject text message(s) and/or telephone call(s) and therefore, Plaintiff's claims must fail.

6. Defendant incorporates by reference all provisions set forth within 47 U.S.C. § 227 and 47 C.F.R. § 64.1200 (including prior versions of this statute and regulation) and relies herein on any safe harbor provisions, exemptions, exceptions, limitations, conditions, or other defenses that may be set forth herein.

7. Defendant states that it has complied with all applicable statutes and regulations, thereby barring any and all of Plaintiff's claims.

8. Plaintiff's claims are barred by the doctrines of estoppel, waiver, consent, and other equitable doctrines.

9. Plaintiff's claims barred because any alleged acts or omissions of Defendant giving rise to the alleged claims were the result of an innocent mistake and/or bona fide error notwithstanding that Defendant established and implemented reasonable practices and procedures to effectively prevent telephone solicitations in alleged violation of the regulations prescribed by 47 U.S.C. § 227. Defendant acted at all times in a reasonable manner in connection with the events at issue in this case.

10. To the extent that Plaintiff received the subject text message(s) and/or telephone call(s) alleged in the Complaint, an automatic telephone dialing system as that term is defined by 47 U.S.C. § 227, the implementing regulations promulgated thereunder, the Federal

Communications Commission's rulings and/or decisional law interpreting same was not used to place the subject text messages.

11. Application of the TCPA, as interpreted by the FCC, violates the First Amendment to the United States Constitution because such application relies upon content-based restrictions of protected speech. *See Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015) ("Government regulation of speech is content-based if a law applies to particular speech because of the topic discussed or the idea or message expressed.").

12. The TCPA violates the First Amendment to the United States Constitution because it is an unconstitutional regulation of free speech. *See Martin v City of Struthers, Ohio*, 319 U.S. 141 (1943).

13. Any loss, injury, or damage incurred by Plaintiff was proximately caused by the acts of third parties whom Defendant neither controlled nor had the right to control, and was not proximately caused by any acts, omissions or other conduct of Defendant.

14. Plaintiff's claims are barred by laches.

15. Any loss, injury, or damage incurred by Plaintiff was caused by independent contractors for whose actions Defendant is not liable.

16. Plaintiff has failed to join all necessary and/or indispensable parties to this action.

17. Plaintiff has not suffered any damages due to Defendant's alleged actions. Plaintiff must sustain an injury in fact specific to each individual text message for which Plaintiff claims a violation.

18. This Court lacks personal jurisdiction over Defendant.

III.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant further respectfully requests that Plaintiff take nothing and that all costs of court be taxed against Plaintiff. Defendant further requests all such other and further relief to which it may show itself justly entitled.

Date: September 10, 2021

Respectfully submitted,

/s/ C. Bryce Benson
C. Bryce Benson
Texas Bar No. 24031736
bryce.benson@akerman.com
Michael B. Hess
Texas Bar No. 24095710
michael.hess@akerman.com
AKERMAN LLP
2001 Ross Avenue, Suite 3600
Dallas, Texas 75201
Telephone: 214.720.4300
Facsimile: 214.981.9339

**ATTORNEYS FOR DEFENDANT
US STANDARD PRODUCTS CORP.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 10, 2021, a true and correct copy of the foregoing document was served, in accordance with the Texas Rules of Civil Procedure, on all counsel of record.

/s/ Michael B. Hess

Michael B. Hess

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Justice of the Peace Courts Case Information

Case Summary for 215200242158 as of September 17, 2021 11:06:20 AM :

General Case Information

Case Number: 215200242158
Court Info: [Click here to visit court web site.](#)
Style of Case: Roger Fountain vs. US Standard Products Corp
Filed Date: August 24, 2021
Days Old: 24
Case Status: Active
Disposition:
Disposition Date:
Judgment Date:

Civil Information

Nature of Claim: Small Claims
Claim Amount: \$20,000.00

Party Information

Party Name: Fountain, Roger

Party Type: Plaintiff

Party Name: US Standard Products Corp

Party Type: Defendant

Hearing Information

Payment Information

Payment Date:	August 24, 2021
Amount:	\$49.00
Payment Type:	Cash
Transaction Type:	Payment
Receipt Description:	Payment
Payor Name:	Fountain, Roger

Event Information

Event Description: Citation

Date Added: August 24, 2021

Event Description: Original Petition Filed

Date Added: August 24, 2021

Event Description: Small Claims-Citation Money Damages

Date Added: August 24, 2021

Event Description: Notice

Date Added: September 08, 2021

Event Description: Answer Filed

Date Added: September 10, 2021

Bond Information

Judgment Information

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